

April 22, 2004

ENERGY & ENVIRONMENT
COMMITTEE
REPORT NO. 5

ALL MEMBERS PRESENT.

1. RESOLVED, that the following items are hereby received and filed.
 - a. Item Page -2004 (Comm. 8E-14)
COUNTY EXECUTIVE: ECSD No. 1 – EC Sewer Agency Report – Increase & Improvement of Facilities (2004).
(5-0)
 - b. Item Page -2004 (Comm. 8E-27)
COUNTY EXECUTIVE: ECSD No. 6 – Construction Inspection Service Agreement.
(5-0)
 - c. Item Page -2004 (Comm. 8E-29)
COUNTY EXECUTIVE: ECSD No. 1 – Engineering Service Agreements.
(5-0)
 - d. Item Page -2004 (Comm. 8E-30)
COUNTY EXECUTIVE: ECSD No. 1 – Engineering Service Agreements.
(5-0)
 - e. Item Page -2004 (Comm. 8E-31)
COUNTY EXECUTIVE: ECSD No. 1 – Engineering Service Agreements – URS Corporation – Change Order No.1.
(5-0)
2. Item Page -2003 **AS AMENDED**
COUNTY EXECUTIVE (Comm. 20E-41)
RESOLUTION NO. ____-2004

A RESOLUTION APPROVING AN INCREASE AND IMPROVEMENT OF THE FACILITIES OF THE ERIE COUNTY SEWER DISTRICT NO. 3 IN THE COUNTY OF ERIE, NEW YORK.

(Introduced) _____, 2004.
(Adopted) _____, 2004.

WHEREAS, pursuant to proceedings heretofore had and taken in accordance with the provisions of Article 5-A of the County Law, including approving orders of the State Comptroller, County Sewer District No. 3 of the County of Erie, New York, has heretofore been established and created on April 9, 1963 (the "District") to provide sewer services to the Village of Orchard Park, most of the Town of Orchard Park, and parts of the Towns of West Seneca and Hamburg; and

WHEREAS, since the 1970s extensions to the District known as the Boston Valley, Armor-McKinley, Blasdel and Holland Extensions were formed; and

WHEREAS, the District and all extensions thereof were consolidated in 2003; and

WHEREAS, the Board of Managers of Erie County Sewer District No. 3 has duly directed that there be prepared a report and estimate of cost by the County Engineers (Erie County Department of Environment and Planning) relating to a proposed increase and improvement of the facilities of the District which report and estimate of cost have been approved by the Board of Managers of Erie County Sewer District No. 3 on December 10, 2003 and filed with the County Legislature pursuant to Section 268 of the County Law; and

WHEREAS, said report and estimate of cost describe a proposed increase and improvement of the facilities of the District, consisting of the reconstruction and/or replacement of approximately 24,500 linear feet of sewer, various pump station upgrades and reconstruction; and the installation and acquisition of process equipment, pumps, meters, controls, lab equipment, and plant reconstruction, as more fully described in the report and estimate of cost hereinbefore referred to; and

WHEREAS, the maximum estimated cost of the aforesaid increase and improvement of the facilities of the District is \$5,000,000, to be apportioned among real properties in the District in accordance with (i) their respective proportionate shares of sewer units in the District, (ii) applicable flat charges, and (iii) assessments against a benefited area which consists of the entire area of said Sewer District No. 3; and

WHEREAS, pursuant to Section 258 of the County Law, as amended by Chapter 397 of the Laws of 1995, the consent of the State Comptroller is not required prior to the construction of said increase and improvement of facilities of the District because the cost thereof to the Typical Property (as defined in the County Law) does not exceed the Average Estimated Cost to the Typical Properties for similar types of expenditures, as computed by the State Comptroller and such cost is \$8.00 for the Town of Hamburg, \$9.35 for the Town of Orchard Park, \$8.40 for the Town of West Seneca, \$6.40 for the Town of Holland, \$9.98 for the Town of Elma, \$9.00 for the Town of Boston, and \$8.55 for the Town of Eden; and

WHEREAS, said County Legislature duly adopted Resolution No. 76 on March 4, 2004, calling a meeting of the County Legislature for the purpose of holding a public hearing on said increase and improvement of facilities in accordance with said report and estimate of cost; and

WHEREAS, such Resolution authorized and directed the Clerk of said County Legislature to publish the notice of public hearing and file a certified copy of such notice with the office of the State Comptroller; and

WHEREAS, said public hearing was duly held at 92 Franklin Street, 2nd Floor, Part 6 in Buffalo, New York, in said County, on April 1, 2004, at 1:30 o'clock P.M., Prevailing Time; and

WHEREAS, notice of said public hearing was duly published and filed in the manner provided by law and proof thereof was submitted to said County Legislature; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ERIE, NEW YORK, AS FOLLOWS:

Section 1. Upon the evidence given at the aforesaid public hearing, it is hereby found and determined that it is in the public interest to proceed with the expenditure for the increase and improvement of the facilities of Erie County Sewer District No. 3, all as more fully described in the preambles hereof, and such increase and improvement of facilities is hereby authorized at a maximum estimated cost of \$5,000,000.

Section 2. The maximum estimated cost of the aforesaid increase and improvement of the facilities of the District is \$5,000,000, to be apportioned among real properties in the District in accordance with (i) their respective proportionate shares of sewered units in the District, (ii) applicable flat charges, and (iii) assessments against a benefited area which consists of the entire area of said Sewer District No. 3.

Section 3. This resolution shall take effect immediately.

(5-0)

			AS AMENDED
3.	Item	Page	-2004 (Comm. 7E-27)
	COUNTY EXECUTIVE		

WHEREAS, the Erie County Department of Environment and Planning has received the following low bid for the French Road Area Sanitary Sewer Rehabilitation Project, Contract No. 30, on April 1, 2004,

<u>Contract No.</u>	<u>Low Bidder</u>	<u>Amount Bid</u>
Contract No. 30	Intercounty Paving Associates, LLC 859 Willow Grove Street Hackettstown, New Jersey 07840	\$794,444.00

and

WHEREAS, the aforementioned bidder has been recognized as successfully performing similar work.

NOW, THEREFORE, BE IT

RESOLVED, that the French Road Area Sanitary Sewer Rehabilitation Project, Contract No. 30, be awarded to the low bidder as follows:

<u>Contract No.</u>	<u>Low Bidder</u>	<u>Amount Bid</u>
Contract No. 30	Intercounty Paving Associates, LLC 859 Willow Grove Street Hackettstown, New Jersey 07840	\$794,444.00

and be it further

RESOLVED, that the County Executive be, and hereby is, authorized to execute the Contract with the aforementioned low bidder subject to approval as to form by the County Attorney and certification of availability of funds from the Project Fund Balance or an authorized advance from the General Fund by the Comptroller's Office; and be it further

RESOLVED, that the Comptroller is authorized and directed to allocate \$794,444.00 from the Sewer Capital Account of Erie County Sewer District No. I, Fund No. 430, Project 694, and be it further

RESOLVED, that the Clerk of the Legislature be directed to send one (1) certified copy of this resolution to Joel A. Giambra, County Executive; two (2) certified copies to Charles J. Alessi, P.E., Department of Environment and Planning; and one certified copy to Nancy Naples, Erie County Comptroller's Office; Gregory Dudek, Assistant County Attorney; and John S. Rizzo, Deputy Comptroller.

(5-0)

4. Item Page -2004 (Comm. 8E-15)

COUNTY EXECUTIVE

WHEREAS, the New York State Energy Research and Development Authority (NYSERDA), through an agreement with the U. S. Department of Energy Rebuild America Program, has been charged with organizing community-based regional partnerships to promote energy-efficient products and services throughout New York State; and

WHEREAS, NYSERDA has identified Western New York as an initial pilot region for Rebuild and has solicited proposals from organizations to locally coordinate the Rebuild Western New York regional network; and

WHEREAS, the Erie County Department of Environment and Planning (ECDEP) has accepted this role and successfully coordinated the Rebuild Partnership in Western New York; and

WHEREAS, through Legislative resolution (Comm. 12E-19) dated June 20, 2002, a budget was established within the ECDEP; and

WHEREAS, the current budget requires revision to maintain program continuity and to allow the County to most efficiently utilize the remaining grant resources; and

WHEREAS, the DEP has applied for and received authorization from NYSERDA to revise the existing budget; and

WHEREAS, the grant work plan for this program calls for energy education and outreach.

NOW, THEREFORE BE IT

RESOLVED that the County Executive is hereby authorized to enter into a professional services contract with Camroden Associates for .energy and indoor air quality training in an amount not to exceed \$1,500; and be It further

RESOLVED, that the grant budget for the Erie County Alternative Fuel Consortium Grant Project and Rebuild Western New York Initiative (SFG #223) will be revised as follows:

APPROPRIATIONS:

Account	Description	Current Budget	Revisions	Revised Budget
800	Salaries	\$230,181	(\$7,000)	\$223,181
805	Fringe Benefits	56,769	12,500	69,269
824	Local Travel and Mileage	2,000	0	2,000
825	Out-of-Area Travel	10,700	0	10,700
826	Other	8,502	(5,500)	3,002
830	Contractual Services	574,260	0	574,260
933	Equipment	725	0	725
880-6200	Interfund Expenses-E&P	19,423	0	19,423
TOTAL APPROPRIATIONS:		\$902,560		\$902,560

and be it further

RESOLVED, that certified copies of this resolution be sent to the County Executive, the Director of Budget, Management and Finance; Laurence K. Rubin, Commissioner of Environment and Planning; Michael Raab, Deputy Commissioner of Environment and Planning; the County Comptroller; and the County Attorney.
(5-0)

5. Item Page -2004 (Comm. 8E-25)

COUNTY EXECUTIVE

WHEREAS, the Board of Managers for Erie County Sewer District No. 2 has requested the creation of the position of Laboratory Technician -RPT, Job Group 7 in Erie County Sewer District No. 2; and

WHEREAS, the District requires this position to assist in the increased testing required at the plant and the Overflow Retention Facility due to the implementation of the new New York State Pollution Discharge System (SPDES) Permit; and

WHEREAS, the increased testing requirements have caused them to be performed on overtime and by higher salaried personnel.

NOW, THEREFORE, BE IT

RESOLVED, the creation of the position of Laboratory Technician -RPT, Job Group 7, is hereby authorized and approved in the 2004 Budget; and be it further

RESOLVED, that the funding for the position be taken out of the 2004 Budget, Erie County Sewer District No. 2, Unexpended Salaries; and be it further

RESOLVED, that certified copies of the approved Resolution is sent to Joel A. Giambra, County Executive; Charles J. Alessi, P.E., Deputy Commissioner, Department of Environment and Planning, the Erie County Personnel Department and the Erie County Budget Office.

(5-0)

6. Item Page -2004 (Comm. 8E-26)

COUNTY EXECUTIVE

WHEREAS, the County recognizes the need to properly train its employees to protect their health and well being, and to comply with applicable state and federal regulations, and

WHEREAS, Erie County's Division of Sewerage Management has applied for funds from the Western New York Council On Occupational Safety & Health through a New York State Department of Labor Hazard Abatement Board training grant.

NOW, THEREFORE, BE IT

RESOLVED, that the proposed agreement between the County of Erie and the Western New York Council on Occupational Safety & Health to provide health and safety training to the Division of Sewerage Management and Sewer District employees is hereby approved, and be it further

RESOLVED, that the County Executive be, and hereby is, authorized to execute said agreement subject to approval as to form by the County Attorney and as to content by the Commissioner of Environment & Planning, and be it further

RESOLVED, that the Clerk of the Legislature be authorized and directed to send two certified copies of this resolution to Charles J. Alessi, P.E., Deputy Commissioner, Department of Environment and Planning, and one certified copy each to Joel A. Giambra, County Executive; Joseph Passafiume, Director of Budget and Management, Nancy Naples, Erie County Comptroller, and Gregory Dudek, Assistant County Attorney.

(5-0)

7. Item Page -2004 (Comm. 8E-28)

COUNTY EXECUTIVE

WHEREAS, the Erie County Department of Environment & Planning, Division of Sewerage Management has identified the need to retain an Engineer to develop an Engineer's Report to analyze alternatives and prepare a basis of design for the proposed Dodge Road relief sewer; and

WHEREAS, the Erie County Department of Environment & Planning, Division of Sewerage Management; Erie County Sewer District No. 5 Board of Managers; the Town of Amherst and the Town of Clarence have recommended the firm of URS Corporation, 640 Ellicott Street, Buffalo, New York 14228.

NOW, THEREFORE, BE IT

RESOLVED, that an agreement with the engineering firm of URS Corporation, at a cost not-to-exceed \$72,000 be approved; and be it further

RESOLVED, that the County Executive be, and hereby is, authorized to execute an Agreement with the firm of URS Corporation, 640 Ellicott Street, Buffalo, New York 14228, to provide the needed services, subject to approval as to form by the County Attorney and approval as to content by the Commissioner of the Department of Environment & Planning; and be it further

RESOLVED that the Director of Budget, Management and Finance be directed to allocate funds accordingly, as follows:

ECSD No. 5 Capital Project Account 430-798-810 in an amount not-to-exceed \$72,000; and be it further,

RESOLVED, that the Clerk of the Legislature be directed to send two certified copies of this resolution to Charles J. Alessi, P.E., Deputy Commissioner, Department of Environment and Planning, one copy to Joel A. Giambra, County Executive; Nancy Naples, County Comptroller; Joseph Passafiume, Director of Budget, Management and Finance, and Gregory Dudek, Assistant County Attorney.

(5-0)

8.	Item	Page	-2004	AS AMENDED (Comm. 8E-52)
	COUNTY EXECUTIVE			
	RESOLUTION NO. ____-2004			

BOND RESOLUTION DATED _____, 2004

BOND RESOLUTION AUTHORIZING THE ISSUANCE OF \$5,000,000 BONDS OF THE COUNTY OF ERIE, OR SO MUCH THEREOF AS MAY BE NECESSARY, TO FINANCE THE COST OF AN INCREASE AND IMPROVEMENT OF THE FACILITIES OF ERIE COUNTY SEWER DISTRICT NO.3; STATING THE ESTIMATED MAXIMUM COST THEREOF IS \$5,000,000; STATING THE PLAN OF FINANCING SAID COST INCLUDES THE ISSUANCE OF \$5,000,000 BONDS HEREIN AUTHORIZED; PROVIDING FOR A TAX TO PAY THE PRINCIPAL OF AND INTEREST ON SAID BONDS; AND PROVIDING FOR REIMBURSEMENT BY ERIE COUNTY SEWER DISTRICT NO. 3 TO SAID COUNTY.

(Introduced) _____, 2004
 (Adopted) _____, 2004

WHEREAS, pursuant to proceedings had and taken in accordance with the provisions of Article 5A of the County Law and more particularly a resolution of this County Legislature dated April 28, 2004, an increase and improvement of facilities for Sewer District No. 3 has been approved at a estimated maximum cost of \$5,000,000, and

WHEREAS, it is now desired to provide for the financing of said costs,

NOW THEREFORE BE IT

RESOLVED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ERIE, NEW YORK (by the affirmative vote of not less than two-thirds of the voting strength of said Legislature), AS FOLLOWS:

Section 1. Pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York, as amended (the "Law"), and to the provisions of other laws applicable thereto, \$5,000,000 bonds of the County, or so much thereof as may be necessary, are hereby authorized to be issued to finance the cost of an increase and improvement of facilities for Erie County Sewer District No. 3, all as more fully described in the report and estimate of cost approved by the Board of Managers of said District on December 10, 2003 and filed with the County Legislature. The estimated maximum cost of said specific object or purpose, including preliminary costs and costs incidental thereto and to the financing thereof, is \$5,000,000. The plan of financing includes the issuance of \$5,000,000 bonds herein authorized and any bond anticipation notes issued in anticipation of the sale of such bonds, and the levy of a tax to pay the principal of and interest on said bonds and notes, the said principal and interest to be reimbursed to the County by assessment against the benefited areas in Erie County Sewer District No.3 and the contracting communities.

Section 2. The period of probable usefulness for the specific objects or purposes for which said \$5,000,000 bonds herein authorized to be issued, within the limitations of Section 11.00 a.4. of the Law, is forty (40) years.

Section 3. Current funds are not required to be provided as a down payment prior to the issuance of the \$5,000,000 bonds authorized herein, or any bond anticipation notes issued in anticipation thereof, pursuant to Section 107.00 d.3. of said Law.

Section 4. The County intends to finance, and the Comptroller of the County is hereby authorized to advance such amounts as are necessary to pay the costs of the object or purpose described in Section 1 hereof prior to the issuance of the bonds or bond anticipation notes authorized out of any available funds of the County, on an interim basis, which amounts are reasonably expected to be reimbursed with the proceeds of debt to be incurred by the County, pursuant to this Resolution, in the maximum amount of bonds herein authorized. This Resolution is a declaration of official intent adopted pursuant to the requirements of Treasury Regulation Section 1.150-2.

Section 5. Subject to the provisions of this Resolution and of the Law, and pursuant to the provisions of §30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals thereof, and of §§50.00, 56.00 to 60.00 and 168.00 of said Law, the powers and duties of the County Legislature relative to authorizing the issuance of any notes in anticipation of the sale of the respective amounts of bonds herein authorized, or the renewals thereof, relative to providing for substantially level or declining annual debt service, relative to prescribing the terms, form and contents and as to the sale and issuance of the respective amounts of bonds herein authorized, and of any notes issued in anticipation of the sale of said bonds or the renewals of said notes, and relative to executing agreements for credit enhancement, are hereby delegated to the Comptroller of the County, as the chief fiscal officer of the County.

Section 6. Each of the bonds authorized by this Resolution and any bond .anticipation notes issued in anticipation of the sale thereof shall contain the recital of validity prescribed by Section 52.00 of said Local Finance Law and said bonds and any notes issued in anticipation of said bonds shall be general obligations of the County of Erie, payable as to both principal and interest by general tax upon all the taxable real property within the County without limitation as to rate or amount. The faith and credit of the County are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds or the renewals of said notes, and provision shall be made annually in the budgets of the County by appropriation for (a) the amortization and redemption of the notes and bonds to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 7. The validity of the bonds authorized by this Resolution and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

(a) such obligations are authorized for an object or purpose for which the County is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of this Resolution, or a summary hereof, are not substantially complied with, and an action, suit or proceeding contesting such validity, is commenced within twenty days after the date of such publication, or

(c) such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This Resolution shall take effect immediately upon approval by the County Executive.
(5-0)

9. Item Page -2004 (Comm. 8E-55)

COUNTY EXECUTIVE

WHEREAS, The Buffalo and Erie County Botanical Gardens Society, Inc. ("Society") presents this letter of intent to the County of Erie ("County") for the purpose of outlining a proposed relationship for the ownership, governance, maintenance and operation of The Buffalo and Erie County Botanical Gardens at 2655 South Park Avenue, Buffalo, New York 14218 and the horticultural collection located there (collectively "Gardens").

The Society proposes to the County the following terms:

A. Preface

1. The Society and the County shall collaborate in the implementation of the *"Proposed Plan, A Public-Private Partnership for Ownership and Operation of the Buffalo and Erie County Botanical Gardens, March, 2003"* prepared by the Society ("Proposed Plan") which is incorporated herein by reference.

B. Ownership

1. Subject to Paragraph B.3. below, the County will continue to own the 11.4+ acres of real estate, including all improvements constructed thereon, located at 2655 South Park Avenue, Buffalo, New York 14218 ("Premises").
2. The Society will have the exclusive right to use and occupy the Premises for a term of twenty-five (25) years but only for the purpose of operating the Gardens for the education and recreation of the residents of and visitors to Erie County and the conservation of endangered plant species.
3. In order to permit the Society to attract non-governmental funding sources, to manage the collection and to fulfill the requirements of accrediting organizations such as the American Association of Museums ("AAM"), the County shall convey and the Society will own the horticultural collection with the exclusive right exercised in its sole discretion to acquire, propagate, replace, remove, substitute or eliminate specimens as best practice standards for the operation of a botanical gardens of this size and type shall indicate. The collection shall include all plantings, including lawns, whether located within or without buildings on the Premises.
4. The County shall convey and the Society shall own all equipment, supplies and other personal property (inclusive of the aforementioned horticultural collection) whether presently located on the Premises or hereafter acquired. Likewise, at the conclusion of the term hereof, the Society shall similarly convey and the County shall own all equipment, supplies and other personal property (including the then existing horticultural collection) then located on the Premises which had been originally conveyed by the County to the Society pursuant hereto together with any replacements for said equipment, supplies and other personal property then located on the Premises which had been purchased by or donated to the Society during the term hereof. It is not the intention of the parties however, that equipment, supplies and other personal property currently owned or hereafter acquired by the Society which are not replacements for equipment, supplies and personal property conveyed to the Society by the County pursuant hereto, will be conveyed to the County at the conclusion of the term hereof, provided that nothing in this sentence shall be deemed to limit the obligation of the Society to convey to the County all of the then existing

horticultural collection located at the Premises at the expiration, or earlier termination, of the lease.

5. Subject to paragraph B.3 above, any capital improvements made to the Premises whether by the Society, the County or any other source, shall become part of the Premises and shall become the property of the County at the expiration or earlier termination of the Lease, free and clear of all liens and encumbrances placed by the Society or placed as a result of the Society's operations, except as otherwise may be agreed to in writing by the County during the term of the Lease.
6. At the commencement of the Lease and at least bi-annually thereafter the Society and the County shall cause there to be performed an inventory of the personal property, equipment and capital improvements. The Society shall provide to the County an annual audit of its accounts and finances.

C. Governance

1. The Society shall at all times maintain its status in good standing as a Not-For-Profit corporation organized in the State of New York which is tax exempt in accordance with Section 501(c)(3) of the Internal Revenue Code.
2. The Erie County Executive, the County Public Works Commissioner and the County Parks Commissioner shall be ex-officio, voting members of the Board of Directors of the Society. The County Executive may annually designate an individual representative to act in his/her stead.
3. The Society shall comply with all obligations applicable to the Premises relating to its status as a "Historic Site" listed on the National Register of Historic Places and the New York State Register of Historic Places.
4. The Society shall cooperate with the County, the City of Buffalo, the City of Lackawanna, the New York State Office of Parks, Recreation and Historic Preservation and the Olmsted Conservancy with respect to the making of capital improvements to the Premises and the operations of the Gardens in order to preserve and enhance its status as a "Historic Site" within an Olmsted Park.
5. The Society shall be governed by a Board of Directors selected without regard to race, creed, religion, gender, disability or national origin but who shall reflect diverse backgrounds and talents needed to operate botanical gardens.

D. Maintenance:

1. The County shall convert the buildings located on the Premises to be "smart" buildings for the purposes of controlling and operating all HVAC systems. Until

such improvements are completed and fully operational, the County shall provide at its expense qualified personnel to operate existing HVAC systems.

2. The County shall, within the limits of a series of capital budgets adopted by the County over the period from 2005 through and including 2013, fund and undertake a total of \$9 million of capital improvements to the buildings on the Premises, consistent with the Proposed Plan or as may otherwise be agreed to by the County and the Society which are necessary to operate the Gardens in a manner consistent with the standards of the AAM for accredited botanical gardens of its size and type and the Proposed Plan. Any such capital improvements made by the County shall remain the property of the County but shall be considered part of the Premises and Gardens for purposes of the Society's responsibilities under the Lease. As stated in E.6. below, the Society shall seek contributions and grants from sources other than the County to help provide funding for the capital projects envisioned in the Proposed Plan.
3. The Society shall maintain, including daily and routine maintenance and repair the Premises in a clean and safe condition suitable for use by the Society or the public, as appropriate, in a manner consistent with its intended purpose. It is not intended that the Society's responsibility to maintain and repair the Premises shall substitute for or obviate the County's responsibilities to fund and undertake capital improvements as provided for herein.
4. The County shall provide or cause to be provided all electric service, City water service, natural gas service and/ or heating fuel oil to the Premises necessary for the operation of the Gardens without cost to the Society.

E. Operations:

1. The Society shall be solely responsible for the operation (including management) of the Gardens in a manner consistent with the standards of the AAM for accredited botanical gardens of its size and type and the Proposed Plan.
2. With the exception of D.1. above, all management and staff personnel for the operation of the Gardens shall be employees of the Society who shall be hired without regard to race, creed, religion, gender, disability or national origin.
3. The County shall be responsible for negotiating revisions to all collective bargaining agreements to which it is a party insofar as such agreements relate to County employees currently working at the Gardens or on the Premises for the purpose of transferring or making other work assignments for such employees who shall remain part of the collective bargaining units. It is the intention of the parties hereto that all personnel employed by the Society for the operation of the Gardens shall not be members of such collective bargaining units.

4. The County represents, and the Society recognizes, that the County is self-insured and that Premises and the Gardens fall within the County's self-insurance plan. Additionally, the County shall cause any and all contractors and vendors who shall perform work or services for the County, at the Gardens, for which the County requires liability insurance, to name the Society as an additional insured on such insurance policies.

To the extent permitted by State law, the County shall indemnify, hold harmless, and defend the Society from all claims, lawsuits, costs, damages, or injuries to persons or property, including those relating to pollution, hazardous waste and materials, and other conditions of the Premises as leased or as improved by the County, arising out of the contractual duties and responsibilities of the County, except to the extent that such liability is attributable to the acts, omission, or negligence of the Society or its officers, employees, directors, agents or contractors. The Society shall at all times during the term hereof, maintain comprehensive liability, automobile liability, and excess liability insurance naming the County as an additional insured such forms and amounts as required and approved by the County Attorney. The Society shall indemnify, defend and hold harmless the County from all claims, lawsuits, costs, damages, or injuries to persons or property, including those relating to pollution, hazardous waste and materials, and other conditions of the Premises attributable to the operation or improvement of the Premises by the Society, arising out of the contractual duties and responsibilities of the Society, except to the extent that such liability is attributable to the acts, omission, or negligence of the County or its officers, employees, agents or contractors.

5. The County shall provide funding to the Society for the operation of the Gardens for a minimum term of five (5) fiscal years, in the amount of \$450,000/year. These sums payable pursuant hereto shall be exclusive of any Public Benefit Grants or Cultural Funding Grants upon which the Society is dependent to fund its operations.
6. The Society shall seek contributions and grants from other governmental sources, foundations, corporations and individuals to support the operations of the Gardens or to provide funding for the capital projects envisioned in the Proposed Plan. The Society shall have the right to name the entire, or any portion, of the Gardens, in recognition of particular contributions or grants to the Society or the Gardens. Approval of the naming of the entire Gardens shall be subject to the approval of the County Executive, which shall not be unreasonably withheld.
7. The Society may sell memberships, seek named program sponsorships, charge admission fees and undertake such other marketing and revenue generating activities to support financially the operations of the Gardens but in a manner

consistent with the standards of the AAM for accredited botanical gardens of its size and type and the Proposed Plan.

8. The Society shall improve and expand its exhibits and programs adhering to the standards of the AAM for accredited botanical gardens of its size and type and the Proposed Plan. It is understood that this letter constitutes a non-binding letter of intent that expresses the wishes of the parties. Once executed, the County and the Society shall endeavor to prepare all legal documentation necessary and appropriate to effect its terms within one hundred and twenty (120) days.

(5-0)

AS AMENDED

10. Item Page -2004 (Intro. 8-4)

MINORITY CAUCUS

WHEREAS, Americans drive more than 2.6 trillion miles per year in automobiles, light trucks and SUVs, according to recent reports, and

WHEREAS, the price of gasoline in the United States has been steadily rising for the last year, and

WHEREAS, the national average for gasoline is \$1.74, up \$.08 from \$1.66 a month ago and \$.03 more than the national average of \$1.71 a year ago, and

WHEREAS, in Western New York, the current average price for gasoline is \$1.85 a gallon, and

WHEREAS, crude oil for May delivery sold for approximately \$38 per barrel this week on the New York Mercantile Exchange, which is near its highest level in 14 years, and

WHEREAS, The Department of Energy recently reported that the 8.9 million barrels of oil consumed per day for the last four weeks is roughly 4.9% higher than the same period last year, and

WHEREAS, late spring through the summer is peak travel time in the United States, which will put additional stress on the already fragile market, and

WHEREAS, unstable gasoline prices make budgeting for fuel costs extremely difficult for families and businesses, and

WHEREAS, numerous lawmakers have addressed the issue and suggested action, including: Senators Charles Schumer of New York, Barbara Boxer of California and Harry Reid of Nevada, who urged the President of the United States to release oil from the reserve, which is close to its 700 million- barrel capacity at 648 million barrels as of March 12, and

WHEREAS, the federal administration has stated that oil reserves are for national emergencies and that at this time they will not release any of oil from the petroleum reserves, and

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature is deeply concerned about the impact that rising gas prices is having on the local economy, and be it further

RESOLVED, that this Honorable Body is supportive of any solution that will help to reduce the cost of gasoline, and be it further

RESOLVED, that this Honorable Body calls on President George W. Bush to reverse his decision, and, in the interest of stabilizing gasoline prices and supporting American consumers, to follow the pattern set by his predecessors and to release petroleum from the United States Strategic Petroleum Reserve (SPR), and be it further

RESOLVED, that, in the event the President will not release any petroleum from the SPR, this Honorable Body offers its support for alternative approaches, such as suspending shipments of crude oil to the SPR to allow for more product to be available for consumption, thus facilitating lower prices for gasoline, and be it further

RESOLVED, that certified copies of this resolution be submitted to the President, Energy Secretary Spencer Abraham (U .S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C 20585), to the New York State Delegation of the United States Senate, and to the local delegation of the United States House of Representatives.

Fiscal Impact: POSITIVE FOR ERIE COUNTY RESIDENTS
(5-0)

RAYMOND K. DUSZA
CHAIRMAN